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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,383	12/21/2001	Tom K. Wentzel	KCC 4843 (KC# 15,400)	5427
7590	09/08/2005		EXAMINER	
Senniger, Powers, Leavitt & Roedel 16th Floor One Metropolitan Square St. Louis, MO 63102			KIDWELL, MICHELE M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

TWJ

<b>Office Action Summary</b>	<b>Application No.</b> 10/032,383	<b>Applicant(s)</b> WENTZEL ET AL.	
	<b>Examiner</b> Michele Kidwell	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 June 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-5, 7-9, 11-22, 24-33, 35, 37-56 and 61-64 is/are pending in the application.
- 4a) Of the above claim(s) 2, 17-19, 21-22, 24, 25, 27, 32, 37-51, 56, 61, 63 and 64 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-5, 7-9, 11-16, 20, 26, 28-31, 33, 35, 52-55 and 62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
       Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
       Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of species 1 in the reply filed on June 8, 2005 is acknowledged. The traversal is on the ground(s) that there is no serious burden on the examiner to examine the claims absent an election. This is not found persuasive because the applicant's amendments to the claims necessitated the election of species requirement because the added limitations were not originally present in the claims and presented a new species that has never been examined. This additional species in conjunction with the previously presented species is burdensome.

The requirement is still deemed proper and is therefore made FINAL.

This application contains claims 2, 17 – 19, 21 – 22, 24 – 25, 27, 32, 37 – 51, 56, 61 and 63 – 64 drawn to an invention nonelected with traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 3 – 5, 11 – 14, 16, 20, 26, 28 – 29, 31, 33, 52 – 55 and 62 are rejected under 35 U.S.C. 102(b) as being anticipated by Keun et al. (US 5,386,595).

As to claims 3 and 33, Keun et al. (hereinafter “Keun”) discloses the absorbent article as a diaper in col. 1, lines 15 – 21.

Regarding claims 4 and 5, Keun discloses the fastener as a generally rectangular shape as set forth in figure 7.

With reference to claims 11 and 12, Keun discloses the invention as claimed. The examiner contends that the article of Keun is identical to that claimed. If not, a user would not be able to remove the fastener from the garment without also removing the fastener itself. The surface area of the back of the fastener (anchor end) is different from the surface area on the front on the fastener (user end) in that that the user end of the fastener has a plurality of hooks joined thereto.

As to claims 13 and 28, see col. 10, lines 34 – 41.

With reference to claim 14, the examiner contends that any portion the surface area of the anchor end that is three times larger than that of a surface area on the user end may be interpreted to meet the claimed limitation.

With respect to claims 16, 29 and 31, Keun discloses an absorbent article wherein the fastener has the claimed length and width as set forth in col. 8, lines 32 – 41.

Regarding claim 20, Keun discloses an absorbent article further comprising an outer cover with active landing material as set forth in figure 7.

As to claim 26, Keun discloses the fastener comprising an anchor end and a user end as set forth in figure 7.

With reference to claim 52, Keun discloses a disposable absorbent article comprising a first waist region, a second waist region, a crotch region extending longitudinally between the first and second waist regions, the absorbent article being foldable generally within the crotch region to configure said article with first waist region in generally opposed relationship with second waist region (figure 7) and at least one fastener comprising a single piece of flexible material having an active fastening surface extending continuously thereon (76A), at least a portion of the active fastening surface being located on the fastener for anchoring to said article on landing material located generally at said first waist region (72A) and at least one other portion of the active fastening material being located on the fastener for fastening to the article on landing material located generally at the second waist region (74A) to secure the article on a wearer, the active fastening surface being covered substantially in entirety by an active fastening material different than the landing material, the active fastening material comprising one of a plurality of hooks and a plurality of loops, the landing material comprising the other of a plurality of hooks and a plurality of loops as set forth in col. 13, lines 38 – 44 and in figure 7.

As to claim 53, Keun discloses an absorbent article wherein the article has an inner surface and an outer surface with the fastener being adapted for anchoring to the outer surface of the article generally at the first waist region and for fastening to the

outer surface at the second waist region to secure the article on the wearer as set forth in figure 7.

Regarding claim 54, Keun discloses an article further comprising a liner defining the inner surface of the article, an outer cover in opposed relationship with the liner and defining the outer surface of the article, and an absorbent core between the liner and the outer cover as set forth in col. 4, lines 22 – 28.

With reference to claim 55, Keun discloses a disposable absorbent article comprising a first waist region, a second waist region, a crotch region extending longitudinally between the first and second waist regions, the absorbent article being foldable generally within the crotch region to configure said article with first waist region in generally opposed relationship with second waist region (figure 7), an outer cover (figure 7), and at least one fastener comprising a single piece of flexible material having an anchor end, a user end opposite the anchor end (figure 7) and an active fastening surface extending continuously thereon, at least a portion of the fastening surface being located on the fastener for anchoring to said article generally at said first waist region and at least one other portion of the active fastening material being located on the fastener for fastening to said article generally at said second waist region to secure said article on a wearer, the active fastening surface being substantially covered by an active fastening material, the portion at the anchor end configured to have a first shear strength and the portion at the user end configured to have a second shear strength, the first shear strength being greater than the second shear strength as set forth in figure 7. The examiner contends that the article of Keun is identical to that claimed. If not, a user

would not be able to remove the fastener from the garment without also removing the fastener itself. The surface area of the back of the fastener (anchor end) is different from the surface area on the front on the fastener (user end) in that that the user end of the fastener has a plurality of hooks joined thereto.

With reference to claim 62, Keun discloses a disposable absorbent article having a longitudinal direction and a lateral direction, said article comprising a first waist region, a second waist region, a crotch region extending longitudinally between the first and second waist regions, the absorbent article being foldable generally within the crotch region to configure the article with the first waist region in generally opposed relationship with the second waist region (figure 7 and at least one fastener comprising a single piece of flexible material having an active fastening surface extending continuously thereon, at least a portion of the active fastening surface being located on the fastener for fastening to the article on landing material located generally at the first waist region and at least one other portion of the active fastening material being located on the fastener for fastening to the article on landing material located generally at the second waist region to secure the article of a wearer (figure 7), the active fastening surface comprising an active fastening material different than said landing material, the active fastening material comprising one of a plurality of hooks and a plurality of loops, the landing material comprising the other of a plurality of hooks and a plurality of loops, said fastening material being releasably engageable with the landing material of the article as set forth in col. 13, lines 38 – 44 and in figure 7.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 – 9, 15, 30 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keun et al. (US 5,386,595).

The difference between Keun and claim 7 is the provision that the active fastening material comprises a plurality of hooks.

Keun discloses a fastener wherein the active fastening material comprises a plurality of loops.

It would have been obvious to one of ordinary skill in the art to provide the active fastening material of Kuen with hooks instead of loops since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art.

With respect to claims 8 – 9, it would have been obvious to one of ordinary skill in the art to modify the configuration and density of the plurality of hooks in order to determine the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of ordinary skill in the art.

The difference between Keun and claim 15 is the provision that a second shear strength at the user end of the fastener is greater than 2,000 grams tensile.



Keun discloses a fastener with the claimed shear force as set forth in col. 10, lines 34 – 41.

It would have been obvious to one of ordinary skill in the art to modify the first and second shear strength of Keun in order to determine the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering to optimum or workable ranges involves only routine skill in the art.

With respect to claim 30, see the rejection of claim 15.

With respect to claim 35, see the rejection of claim 7.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday - Friday, 5:30am - 2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michele Kidwell  
Primary Examiner  
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